

Soto  
Speier  
Suozi  
Swalwell (CA)  
Takano  
Thompson (CA)  
Thompson (MS)  
Titus

Tonko  
Torres  
Tsongas  
Vargas  
Veasey  
Vela  
Velázquez  
Visclosky

Walz  
Wasserman  
Schultz  
Waters, Maxine  
Hunter  
Welch  
Wilson (FL)  
Yarmuth

## NOT VOTING—13

Collins (NY)  
Davis, Danny  
Davis, Rodney  
Deutch  
Fudge

Harris  
Jordan  
Kelly (PA)  
Marino  
Payne

Rush  
Slaughter  
Walorski

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The **SPEAKER** pro tempore (during the vote). There are 2 minutes remaining.

□ 1406

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## PERSONAL EXPLANATION

Mr. **RODNEY DAVIS** of Illinois. Mr. Speaker, had I been present, I would have voted “yea” on rollcall No. 162, and “yea” on rollcall No. 163.

## PERSONAL EXPLANATION

Mrs. **WALORSKI**. Mr. Speaker, I was unavoidably detained. Had I been present, I would have voted “yea” on rollcall No. 162, and “yea” on rollcall No. 163.

## THE JOURNAL

The **SPEAKER** pro tempore. The unfinished business is the question on agreeing to the Speaker's approval of the Journal, on which the yeas and nays were ordered.

The question is on the Speaker's approval of the Journal.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 243, nays 165, answered “present” 1, not voting 20, as follows:

[Roll No. 164]

YEAS—243

Abraham  
Aderholt  
Allen  
Amodei  
Arrington  
Babin  
Bacon  
Banks (IN)  
Barletta  
Barr  
Barton  
Bilirakis  
Bishop (MI)  
Bishop (UT)  
Black  
Blackburn  
Blunt Rochester  
Bonamici  
Brady (TX)  
Brat  
Bridenstine  
Brooks (AL)  
Brooks (IN)  
Brown (MD)  
Buchanan  
Budd  
Bustos  
Butterfield  
Byrne  
Calvert  
Carter (TX)  
Cartwright  
Castro (TX)

Chabot  
Chaffetz  
Cheney  
Chu, Judy  
Cicilline  
Clark (MA)  
Clay  
Cole  
Comer  
Comstock  
Cook  
Cooper  
Correa  
Cramer  
Crawford  
Crist  
Cuellar  
Culberson  
Cummings  
Davidson  
Davis (CA)  
Davis, Rodney  
DeGette  
DeLauro  
DeBene  
Demings  
Dent  
DeSaulnier  
DesJarlais  
Diaz-Balart  
Dingell  
Doggett  
Donovan

Duncan (SC)  
Duncan (TN)  
Dunn  
Ellison  
Emmer  
Engel  
Eshoo  
Esty  
Farenthold  
Ferguson  
Fleischmann  
Fortenberry  
Foster  
Frankel (FL)  
Franks (AZ)  
Frelinghuysen  
Gabbard  
Gallago  
Garamendi  
Garrett  
Goodlatte  
Gowdy  
Granger  
Griffith  
Grothman  
Guthrie  
Hanabusa  
Harper  
Harris  
Hartzler  
Heck  
Hensarling  
Higgins (LA)

Himes  
Hollingsworth  
Huffman  
Hultgren  
Hunter  
Issa  
Johnson (GA)  
Johnson (LA)  
Johnson, Sam  
Jones  
Kaptur  
Kelly (MS)  
Kennedy  
Kildee  
King (IA)  
King (NY)  
Knight  
Krishnamoorthi  
Kustoff (TN)  
Labrador  
LaMalfa  
Lamborn  
Larson (CT)  
Latta  
Lawrence  
Lawson (FL)  
Lewis (MN)  
Lipinski  
Loebuck  
Lofgren  
Long  
Love  
Lowenthal  
Lucas  
Luetkemeyer  
Lujan Grisham,  
M.  
Lujan, Ben Ray  
Marshall  
Massie  
Mast  
McCarthy  
McCaul  
McClintock  
McCollum  
McHenry  
McMorris  
Rodgers  
McNerney

Meadows  
Meehan  
Meeks  
Meng  
Messer  
Moolenaar  
Mooney (WV)  
Moore  
Mullin  
Murphy (FL)  
Murphy (PA)  
Nadler  
Napolitano  
Newhouse  
Nunes  
O'Rourke  
Olson  
Palazzo  
Palmer  
Perlmutter  
Pingree  
Pocan  
Polis  
Posey  
Quigley  
Richmond  
Roby  
Roe (TN)  
Rogers (AL)  
Rogers (KY)  
Rohrabacher  
Rooney, Francis  
Rosen  
Roskam  
Ross  
Rothfus  
Royce (CA)  
Ruppersberger  
Russell  
Rutherford  
Sanford  
Scalise  
Schneider  
Schweikert  
Scott (VA)  
Scott, Austin  
Scott, David  
Sensenbrenner  
Serrano

Sessions  
Shea-Porter  
Sherman  
Shimkus  
Shuster  
Simpson  
Sinema  
Smith (MO)  
Smith (NE)  
Smith (NJ)  
Smith (TX)  
Smith (WA)  
Smucker  
Soto  
Speier  
Stefanik  
Stewart  
Suozi  
Swalwell (CA)  
Takano  
Taylor  
Tenney  
Thornberry  
Titus  
Torres  
Trott  
Tsongas  
Vela  
Wagner  
Walden  
Walker  
Walorski  
Walters, Mimi  
Walz  
Wasserman  
Schultz  
Waters, Maxine  
Webster (FL)  
Welch  
Westerman  
Williams  
Wilson (SC)  
Wittman  
Womack  
Yarmuth  
Yoho  
Young (AK)  
Young (IA)  
Zeldin

## NAYS—165

Adams  
Aguilar  
Amash  
Barragán  
Bass  
Beatty  
Bera  
Bergman  
Beyer  
Biggs  
Bishop (GA)  
Blum  
Bost  
Boyle, Brendan  
F.  
Brady (PA)  
Brownley (CA)  
Buck  
Bucshon  
Burgess  
Capuano  
Carbajal  
Cárdenas  
Carson (IN)  
Carter (GA)  
Castor (FL)  
Clarke (NY)  
Cleaver  
Clyburn  
Coffman  
Cohen  
Collins (GA)  
Conaway  
Connolly  
Costa  
Costello (PA)  
Courtney  
Crowley  
Curbelo (FL)  
DeFazio  
Delaney  
Denham  
DeSantis  
Doyle, Michael  
F.  
Duffy  
Español  
Evans

Fitzpatrick  
Flores  
Fox  
Gaetz  
Gallagher  
Gibbs  
Gosar  
Gottheimer  
Graves (GA)  
Graves (LA)  
Graves (MO)  
Green, Al  
Green, Gene  
Grijalva  
Gutiérrez  
Hastings  
Herrera Beutler  
Hice, Jody B.  
Higgins (NY)  
Hill  
Holding  
Hoyer  
Hudson  
Hurd  
Jackson Lee  
Jayapal  
Jeffries  
Jenkins (KS)  
Jenkins (WV)  
Johnson (OH)  
Johnson, E. B.  
Joyce (OH)  
Katko  
Keating  
Kelly (IL)  
Khanna  
Kihuen  
Kilmer  
Kind  
Kinzinger  
Kuster (NH)  
LaHood  
Lance  
Langevin  
Lee  
Levin  
Lewis (GA)  
Lieu, Ted

LoBiondo  
Loudermilk  
Lowey  
Lynch  
MacArthur  
Maloney, Sean  
Matsui  
McEachin  
McGovern  
McKinley  
McSally  
Mitchell  
Moulton  
Neal  
Noem  
Nolan  
Norcross  
O'Halleran  
Pallone  
Panetta  
Pascarell  
Paulsen  
Pearce  
Pelosi  
Perry  
Peters  
Peterson  
Pittenger  
Poe (TX)  
Poliquin  
Price (NC)  
Raskin  
Ratcliffe  
Reed  
Reichert  
Renacci  
Rice (NY)  
Rice (SC)  
Rokita  
Ros-Lehtinen  
Rouzer  
Roybal-Allard  
Ruiz  
Ryan (OH)  
Sánchez  
Sarbanes  
Schakowsky  
Schiff

Schrader  
Sewell (AL)  
Sires  
Stivers  
Thompson (CA)  
Thompson (MS)  
Thompson (PA)  
Tiberi

Tipton  
Turner  
Upton  
Valadao  
Vargas  
Veasey  
Velázquez  
Visclosky

Walberg  
Watson Coleman  
Weber (TX)  
Wenstrup  
Wilson (FL)  
Woodall  
Yoder

## ANSWERED “PRESENT”—1

Tonko

## NOT VOTING—20

Blumenauer  
Collins (NY)  
Conyers  
Davis, Danny  
Deutch  
Faso  
Fudge  
Gohmert

Gonzalez (TX)  
Huizenga  
Jordan  
Kelly (PA)  
Larsen (WA)  
Maloney,  
Carolyn B.  
Marchant

Marino  
Payne  
Rooney, Thomas  
J.  
Rush  
Slaughter

□ 1413

So the Journal was approved.

The result of the vote was announced as above recorded.

## PERSONAL EXPLANATION

Ms. **SLAUGHTER**. Mr. Speaker, I was unavoidably detained and missed rollcall vote numbers 162, 163, and 164. Had I been present, I would have voted “nay” on each vote.

## VETERANS 2ND AMENDMENT PROTECTION ACT

Mr. **ROE** of Tennessee. Mr. Speaker, pursuant to House Resolution 198, I call up the bill (H.R. 1181) to amend title 38, United States Code, to clarify the conditions under which certain persons may be treated as adjudicated mentally incompetent for certain purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The **SPEAKER** pro tempore (Mr. **SIMPSON**). Pursuant to House Resolution 198, the bill is considered read.

The text of the bill is as follows:

H.R. 1181

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the “Veterans 2nd Amendment Protection Act”.

## SEC. 2. CONDITIONS FOR TREATMENT OF CERTAIN PERSONS AS ADJUDICATED MENTALLY INCOMPETENT FOR CERTAIN PURPOSES.

(a) IN GENERAL.—Chapter 55 of title 38, United States Code, is amended by inserting after section 5501A the following new section:

## “§ 5501B. Conditions for treatment of certain persons as adjudicated mentally incompetent for certain purposes

“Notwithstanding any determination made by the Secretary under section 5501A of this title, in any case arising out of the administration by the Secretary of laws and benefits under this title, a person who is mentally incapacitated, deemed mentally incompetent, or experiencing an extended loss of consciousness shall not be considered adjudicated as a mental defective under subsection (d)(4) or (g)(4) of section 922 of title 18 without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such person is a danger to himself or herself or others.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of such title is amended by inserting after the

item relating to section 5501A the following new item:

“5501B. Conditions for treatment of certain persons as adjudicated mentally incompetent for certain purposes.”.

The SPEAKER pro tempore. The gentlemen from Tennessee (Mr. ROE) and the gentlewoman from Connecticut (Ms. ESTY) each will control 30 minutes.

The Chair recognizes the gentleman from Tennessee.

#### GENERAL LEAVE

Mr. ROE of Tennessee. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and insert extraneous material in the RECORD on H.R. 1181.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Members are reminded to not traffic the well during debate.

Mr. ROE of Tennessee. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, too often, as Americans, we tend to take our freedom for granted. We should never forget we owe the freedom to our Nation's veterans. That is why it is so egregious that many veterans come home to find that they have to do battle with the VA—the very agency that is supposed to help and support them—to protect their own constitutional rights. The problem occurs when VA, for whatever reason, determines that a veteran needs assistance managing his or her VA financial benefits and decides to appoint a fiduciary.

Now, there may be many reasons that a veteran might need a fiduciary, such as a veteran who has TBI may have trouble with math and struggles to balance his or her checkbook. But it is important to remember that the decision to appoint a fiduciary is made by a VA bureaucrat, not a judge or a magistrate after ensuring that veteran's due process rights are protected.

Unfortunately, there are serious, unintended consequences when VA appoints a fiduciary. This is because, once VA decides that the beneficiary needs help with finances, even though there may be no evidence that the individual may be a danger to himself or others, the Department sends his or her name to the FBI to be added to the NICS list.

As you know, anyone whose name is on the NICS list is legally prohibited from possessing a firearm. This means that the veteran can no longer participate in sports like hunting or target shooting. The veteran is also legally obligated to relinquish any firearms he or she owns, including collector's pieces and family heirlooms.

I am opposed to the VA's existing policy not only because it deprives veterans of their constitutional rights

without due process of law, I am also concerned that these veterans are not able to participate in recreational therapy programs like VA's program at the VA Grand Junction medical center in Colorado that enables veterans with physical and mental disabilities to go hunting or shooting. I know from personal experience that these therapy programs are very effective in helping these heroes recover from injuries that they have received while serving our country.

It is unfortunate that some of the opponents of this bill are perpetrating the outdated stereotypes that people who are mentally ill may be violent and should be feared. I am concerned that these false characterizations may actually deter people from seeking the health services they need.

It is hard enough for some people to admit they need help, Mr. Speaker, but image how much more difficult it is when they fear that they would be stigmatized and isolated. It is also possible that some veterans decide to avoid using VA healthcare services all together out of fear that a VA bureaucrat may decide that they are incompetent and take away their constitutional rights.

Let's take a look at the people who actually are added to the NICS list as a result of the Veterans Administration's appointing a fiduciary.

There are currently more than 1,000 children under the age of 20 here on the NICS list, likely because VA appointed a fiduciary because they are too young to handle their own money.

VA has also added the names of 107,000 people over 80 years old to the NICS list. These individuals probably just need help with their finances due to their advanced age.

But should VA really take away the Second Amendment rights from our Nation's seniors, particularly those who fought for the country? It is outrageous that the only group of people that can have their constitutional rights taken away without a hearing before a judge or magistrate are the very people who fought for those rights and their dependents. Even criminals must be convicted in a court of law before their names are added to that list, Mr. Speaker.

H.R. 1181 would simply prohibit VA from sending veterans' names to the NICS list unless there is an order from a judge or a magistrate that says the person may harm themselves or others.

This proposal has enjoyed bipartisan support in the past. In 2011, the House passed H.R. 2349, which included similar provisions, by voice vote. And just last month, both the House and Senate passed H.J. Res. 40, which prevented the Social Security Administration from implementing a similar policy to report the names of some people who have received disability insurance benefits to NICS.

H.R. 1181 also has wide support among the veterans community, including the American Legion, the

VFW, and AMVETS. H.R. 1181 is also supported by the National Disability Rights Network and the National Rifle Association. Additionally, H.R. 1181 has a positive statement of the administration's support.

Mr. Speaker, veterans who fought to defend the Constitution should also be allowed the rights it protects. I urge all Members to support H.R. 1181. It is the right thing to do, and I reserve the balance of my time.

Ms. ESTY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I recently joined the Committee on Veterans' Affairs because of its bipartisan history of working together to improve care for our veterans. I stand ready to work with the committee—in particular, with Chairman ROE—and with every Member of this House to improve and work on the important issues that affect our veterans every day. However, I cannot support this bill, and I strongly urge my colleagues to oppose it.

As this House knows all too well, there is a veterans suicide crisis in this country, a crisis that is enabled by the easy access to firearms. Just last week, the Secretary of Veterans' Affairs, David Shulkin, told the House Committee on Veterans' Affairs that the issue of veteran suicide is one of his highest priorities, and it needs to be a priority of this House as well.

Today, on this day that we have this debate, 20 brave men and women who have worn the uniform in service of this country will take their lives in suicide, and the vast majority of them will use a gun.

As folks all over the country who have helped veterans know, the means matter. Research has shown that more than 85 percent of suicide attempts with a firearm are ultimately fatal compared with just 5 percent for all other means. That is why addressing the public health crisis in the veteran community demands a thoughtful and comprehensive approach: to ensure that veterans in crisis do not have easy access to guns and that they get the care that they need and deserve.

And yet, today, this House is voting on legislation that completely ignores the crisis that many of our most vulnerable veterans are facing. Unfortunately, this bill was rushed to the floor with no consideration in committee, collaboration, or even time for all of us to understand its full implications. The majority scheduled H.R. 1181 for a vote in committee last week with the bare minimum notice required, even having to move the start time of the markup to comply with the 48-hour notice requirement.

During last week's committee markup, I raised the concern shared by many who work closely on this issue that H.R. 1181 would end up being applied retroactively. The result of this bill being applied retroactively would mean that, if it should pass, more than 170,000 veterans currently prohibited from owning a firearm would be able to

pass a background check and buy a gun.

While the chairman expressed his sincere intent and desire that this legislation not be applied retroactively, it is fair to say that reasonable people disagree on how this bill would be implemented. This honest disagreement, alone, illustrates exactly why this House should be taking its time on a bill that could have such a profound impact on our Nation's veterans.

The fact of the matter is that, should H.R. 1181 be signed into law, it would need to be read together with the NICS Improvement Amendments Act of 2007, which requires—requires—Federal agencies to update the records they have previously shared with NICS, meaning, should this bill pass, the VA would be required to remove the 170,000 records they have previously shared with NICS since none of those were approved by a court, nor did they meet the new standard established by this bill.

Now, with respect to the text of the bill itself, the Veterans 2nd Amendment Protection Act, contrary to its name, would create an end run around the firearms mental health prohibitor that we have attempted to refine and improve since Congress passed the Brady Act nearly 20 years ago and the bipartisan NICS Improvement Amendment Act of 2007.

Put simply, this bill would make it easier, not harder, for those veterans in crisis to get access to a firearm by establishing a new judicial requirement that is far higher than any other agency's or department's implementation of the firearms mental health prohibitor, and, quite frankly, would be impractical, if not impossible, for the VA to actually use. The VA is already strapped for resources, and it is unclear if it has the legal standing to initiate a legal proceeding such as that suggested in the bill.

As Members of this House know very well, there has been a fierce debate in this country over the meaning and extent of the Second Amendment right to bear arms. But the question before this House today is not whether an American has a right to own a firearm. The Supreme Court has been very clear on this issue, and the controlling law has been settled. However, constitutional rights are not absolute. As the late Justice Scalia wrote in the controlling Supreme Court Heller decision on the Second Amendment, "the Second Amendment is not unlimited."

The question before this House is whether we are going to summarily overturn the VA's efforts over the last 20 years to help prevent veteran suicide and protect veterans' families by reporting the names of veterans with serious mental health issues to the National Instant Criminal Background Check System, known as NICS.

Supporters of this legislation argue that the current process used by the VA to share mental health records with NICS is overinclusive and must be

thrown out and replaced with a process that ensures veterans' due process rights.

I agree that the current process is overinclusive, and I agree that we must do more to ensure veterans have sufficient notice, an opportunity to be heard, and a meaningful opportunity to appeal any decision that may impact their constitutional rights; and I stand ready to work with my colleagues on the committee and in this House to more specifically tailor the application of the firearms background checks law as it applies to veterans, both prospectively and retroactively.

□ 1430

But a wholesale elimination of the VA's long-established practice to help keep firearms out of the hands of veterans who are at serious risk of harming themselves or others is dangerous and misguided.

To be clear, of the 170,000 veterans currently prohibited from owning a firearm, as of 2015, almost 20,000 of them were diagnosed with schizophrenia, over 11,000 with dementia, and over 5,000 with Alzheimer's. For a veteran suffering with a significant mental health condition like one of these, access to a firearm is a serious matter.

Moreover, just 3 months ago, this Congress passed bipartisan legislation that codified a process for how the VA can make a determination of the mental capacity of a veteran before that information is sent to NICS. The 21st Century Cures Act, which passed this House 3 months ago by a vote of 392–26, required a veteran to be provided notice of a proposed financial competency determination and given an opportunity to be heard, present evidence, and be represented at a hearing.

H.R. 1181 seeks to undo this carefully crafted compromise before we even have a chance to study the impacts of the 21st Century Cures Act or the VA's existing practices.

Mr. Speaker, I include in the RECORD a letter signed by 12 veterans, including retired Generals Stanley McChrystal and David Petraeus, whose leadership and support for our military and veterans community is unquestioned and who believe that this bill could put mentally ill veterans in harm's way by giving them easy access to firearms.

VETERANS COALITION FOR  
COMMON SENSE,  
March 14, 2017.

Hon. MITCH MCCONNELL,  
Majority Leader, U.S. Senate,  
Washington, DC.

Hon. PAUL RYAN,  
Speaker, House of Representatives,  
Washington, DC.

Hon. CHUCK SCHUMER,  
Minority Leader, U.S. Senate,  
Washington, DC.

Hon. NANCY PELOSI,  
Democratic Leader, House of Representatives,  
Washington, DC.

DEAR MAJORITY LEADER MCCONNELL, LEADER SCHUMER, SPEAKER RYAN AND LEADER PELOSI, As dedicated service members and members of the Veterans Coalition for Com-

mon Sense, we write to you today to express our grave concerns with legislation being considered by Congress, the Veterans 2nd Amendment Protection Act. This proposal would put America's veterans who need our support the most in harm's way by providing them with easy access to firearms. Instead of passing this irresponsible and dangerous legislation, Congress should instead do more to guarantee that all veterans have access to world-class medical and counseling services. We urge you to oppose this bill.

Our nation is facing a devastating epidemic of veteran suicide. The bill you are debating comes at a time when an average of 20 veterans commit suicide each day, two-thirds of whom do so by using a firearm. We know that non-deployed veterans are at a 61 percent higher risk of suicide compared to the American civilian population, and deployed veterans are at a 41 percent higher risk. Firearms are the most lethal means when it comes to suicide, resulting in death nine out of ten times. When vulnerable veterans have access to firearms, they can do harm not only to themselves but also to family members and loved ones. The impact of these tragedies is felt in communities across our nation.

Last week, we were pleased to hear Secretary of Veterans Affairs (VA) David Shulkin announce his intent to provide urgent mental health care services to veterans with other-than-honorable discharges. This is a step in the right direction. Over 22,000 soldiers in the Army alone have received these bad paper discharges since 2009 due to mental health conditions, and they are among the ones who most need access to comprehensive mental health services.

But they are not the only ones. In 2008, President Bush signed a law requiring all federal agencies to submit the names of individuals who are legally prohibited from possessing guns to the National Instant Criminal Background Check System (NICS). Since then, the VA has submitted over 174,000 names of servicemen and women who require a fiduciary to manage their benefits and have been determined through clear and convincing evidence to meet the federal standard for gun prohibition. Of these 174,000, 19,000 are individuals that suffer from schizophrenia and another 15,000 have severe PTSD.

For these individuals, possession of a firearm could be fatal. The Veterans 2nd Amendment Protection Act would put at risk the safety of these veterans and our communities by changing the standard for gun prohibition, so the VA's determinations would no longer stop a veteran from obtaining a gun. Instead, the names of veterans already in the background check system would be erased, putting them at much greater risk of self-harm. This would be irresponsible, dangerous, and life threatening to those who need access to care, not weapons.

Just last year, Congress worked to ensure that all veterans have appropriate due process protections in place through the 21st Century Cures Act. This codified existing practice and guaranteed that individuals who disagree with their final adjudication have the ability to appeal this determination.

We appreciate your service to your country in the United States Congress, and look forward to working with you to support and protect our men and women in uniform and their communities. In doing so, we urge you to oppose the Veterans 2nd Amendment Protection Act. Thank you for your consideration.

Sincerely,  
Admiral Thad Allen, USCG (Ret.); General Peter W. Chiarelli, USA (Ret.); General Wesley Clark, USA (Ret.); General Michael V. Hayden, USA (Ret.);

General James T. Hill, USA (Ret.); General Stanley A. McChrystal, USA (Ret.); Admiral Eric T. Olson, USN (Ret.); General David H. Petraeus, USA (Ret.); Lieutenant General Mark Hertling, USA (Ret.); Lieutenant General Russel Honore, USA (Ret.); Lieutenant General Claudia J. Kennedy, USA (Ret.); Lieutenant General Norman R. Seip, USAF (Ret.); Rear Admiral James "Jamie" A. Barnett, USN (Ret.); Brigadier General Stephen A. Cheney, USMC (Ret.).

Ms. ESTY. Mr. Speaker, I include in the RECORD a letter from Everytown for Gun Safety and a coalition letter led by the Newtown Action Alliance signed by over 40 organizations from around the country opposing this bill.

EVERYTOWN FOR GUN SAFETY,  
New York, NY, March 7, 2017.

Re Reject H.R. 1181, which would put U.S. veterans in danger.

Hon. PHIL ROE,  
Chairman, House Committee on Veterans' Affairs, Washington, DC.

Hon. TIM WALZ,  
Ranking Member, House Committee on Veterans' Affairs, Washington, DC.

DEAR CHAIRMAN ROE AND RANKING MEMBER WALZ: I write to express Everytown for Gun Safety's strong opposition to H.R. 1181. In the midst of a suicide epidemic among our veterans, this bill would discard hundreds of thousands of mental health records from the background check system and enable Veterans Affairs beneficiaries suffering from severe mental illness to buy firearms.

The stakes could not be higher. Twenty U.S. veterans take their lives each day—a suicide rate more than 20 percent higher than among the civilian population. Two in three of those suicides are carried out with firearms. While suicide in the general population has decreased since the turn of the century, suicide among veterans has not.

H.R. 1181 would repeal the law that blocks VA beneficiaries from possessing or purchasing firearms if they have been found mentally incompetent, after receiving due process and the right to a formal hearing. According to the VA, more than 170,000 prohibiting records for these beneficiaries are already in the background check system. Under this legislation, those records would no longer lead to a failed background check—and would be removed from the system entirely. H.R. 1181 would roll back the law that prohibits people with a VA incompetency finding from purchasing firearms—even though many of these beneficiaries suffer from schizophrenia or severe long-term post traumatic stress disorder.

The current process works, and it provides veterans with due process. To make an incompetency finding, VA officials must have clear and convincing evidence. The beneficiary has an opportunity to request a formal hearing and may appeal an adverse decision to a federal judge. Indeed, the 21st Century Cures Act, passed in 2016 by the Republican Congress and signed into law by President Obama, provides new comfort at the statutory level that beneficiaries can present evidence from a mental health professional and be represented by counsel at incompetency hearings.

When it comes to suicide, means matter. When suicide is attempted with a firearm, the chances that a person will actually end his or her life are radically increased. Because firearms are uniquely lethal, up to 90 percent of suicide attempts with guns result in death. In addition, suicide is often an impulsive act and 90 percent of people who attempt and fail to kill themselves do not end

up dying from suicide. Preventing firearm access in these moments of crisis can be the difference between a long life and a tragedy.

I urge you to protect our service members and veterans by rejecting H.R. 1181.

Sincerely,

JOHN FEINBLATT,  
President.

—  
NEWTOWN ACTION ALLIANCE,  
Newtown, CT, March 14, 2017.

DEAR MEMBERS OF CONGRESS: We strongly urge you to oppose H.R. 1181—Veterans 2nd Amendment Protection Act, a bill that would immediately remove 174,000 individuals deemed "mentally incompetent" by the Department of Veterans Affairs (VA) Secretary from the National Instant Criminal Background Check System (NICS). These individuals who suffer from serious mental illnesses like dementia, schizophrenia, and severe post-traumatic stress disorder (PTSD) will be able to access firearms more easily. With veteran suicide rate increasing by 32.2% from 2001 to 2014, Congress should be closing the background check loopholes rather than weakening our background check system.

Please thoroughly review the 2014 veteran suicide statistics from VA's Fact Sheet on Suicide Prevention to understand why HB 1181 must be opposed to reduce the tragic epidemic of veteran suicides in our nation.

[https://www.va.gov/opa/publications/factsheets/Suicide\\_Prevention\\_FactSheet\\_New\\_VA\\_Stats\\_070616\\_1400.pdf](https://www.va.gov/opa/publications/factsheets/Suicide_Prevention_FactSheet_New_VA_Stats_070616_1400.pdf)  
"Veteran Suicide Statistics, 2014"

In 2014, an average of 20 Veterans died from suicide each day. 6 of the 20 were users of VA services.

In 2014, Veterans accounted for 18% of all deaths from suicide among U.S. adults, while Veterans constituted 8.5% of the US population. In 2010, Veterans accounted for 22% of all deaths from suicide and 9.7% of the population.

Approximately 66% of all Veteran deaths from suicide were the result of firearm injuries.

There is continued evidence of high burden of suicide among middle-aged and older adult Veterans. In 2014, approximately 65% of all Veterans who died from suicide were aged 50 years or older.

After adjusting for differences in age and gender, risk for suicide was 21% higher among Veterans when compared to U.S. civilian adults. (2014)

After adjusting for differences in age, risk for suicide was 18% higher among male Veterans when compared to U.S. civilian adult males. (2014)

After adjusting for differences in age, risk for suicide was 2.4 times higher among female Veterans when compared to U.S. civilian adult females. (2014)

Overview of data for the years between 2001–2014

In 2014, there were 41,425 suicides among U.S. adults. Among all U.S. adult deaths from suicide, 18% (7,403) were identified as Veterans of U.S. military service.

In 2014, the rate of suicide among U.S. civilian adults was 15.2 per 100,000.

Since 2001, the age-adjusted rate of suicide among U.S. civilian adults has increased by 23.0%.

In 2014, the rate of suicide among all Veterans was 35.3 per 100,000. Since 2001, the age-adjusted rate of suicide among U.S. Veterans has increased by 32.2%.

In 2014, the rate of suicide among U.S. civilian adult males was 26.2 per 100,000.

Since 2001, the age-adjusted rate of suicide among U.S. civilian adult males has increased by 0.3%.

In 2014, the rate of suicide among U.S. Veteran males was 37.0 per 100,000.

Since 2001, the age-adjusted rate of suicide among U.S. Veteran males has increased by 30.5%.

In 2014, the rate of suicide among U.S. civilian adult females was 7.2 per 100,000.

Since 2001, the age-adjusted rate of suicide among U.S. civilian adult females has increased by 39.7%.

In 2014, the rate of suicide among U.S. Veteran females was 18.9 per 100,000.

Since 2001, the age-adjusted rate of suicide among U.S. Veteran females has increased by 85.2%."

Gun suicides and homicides are preventable with common sense gun laws. Connecticut passed the second strongest gun violence prevention laws in America after the Sandy Hook tragedy, without infringing on the Second Amendment rights of gun owners. Regrettably, Congress failed to take action after the Sandy Hook massacre and over 400,000 Americans have been killed or injured by guns since the gunman with severe mental illness brutally gunned down 20 innocent children and six educators in five minutes. If it can happen in Sandy Hook then it can happen anywhere.

We urge you to adequately represent the 90 percent of Americans who continue to support expanded background checks to keep guns away from individuals who are a danger to themselves or others. We implore you to vote NO to H.R. 1181, fix NICS and pass an expanded background check bill to protect the military service members, our veterans, our families and our communities throughout the United States.

Sincerely,

Newtown Action Alliance, Blue Star Families, CeaseFire Pennsylvania, CHICAGO SURVIVORS, Coalition Against Gun Violence, Colorado Ceasefire Legislative Action, Connecticut Against Gun Violence, Delaware Coalition Against Gun Violence, Episcopal Peace Fellowship, Gays Against Guns, Greenwich Council Against Gun Violence, Gun Violence Prevention Center of Utah, GunControlToday, Hoosiers Concerned About Gun Violence, Indivisible DuPage, Iowans for Gun Safety, Iowans for Gun Safety, Jessi's Message, Joint Action Committee, Maine Gun Safety Coalition, Marylanders to Prevent Gun Violence, Nebraskans Against Gun Violence.

New Castle NH Huddle, New Castle Promise, North Carolinians Against Gun Violence, NYAGV, Ohio Coalition Against Gun Violence, One Pulse for America, Pride Fund to End Gun Violence, Protect Minnesota, Rabbinical Assembly, Reconstructionist Rabbinical Association, Rhode Island Coalition Against Gun Violence, Seacoast Family Promise, States United to Prevent Gun Violence, Stop Handgun Violence, Texas Gun Sense, The Virginia Center for Public Safety, The Virginia Gun Violence Prevention Coalition, Unitarian Universalists of Santa Fe, WAVE Educational Fund, Women Against Gun Violence, Women's Voices Raised for Social Justice, St. Louis, MO.

Ms. ESTY. Mr. Speaker, I recognize that the current practice of information sharing between the VA and NICS is overinclusive and that alternatives should be explored that would more appropriately balance veterans' Second Amendment rights with ensuring that veterans who pose a danger to themselves or to others do not have access to firearms.

This bill, however, was not considered through regular order and no genuine attempt was made to work across the aisle or with the VA to craft a real solution that addresses the real crisis of veterans' suicide in this country.

I stand ready to work with the chairman to address legitimate concerns regarding the VA process. And in fact, just yesterday, I visited at length with VA Secretary Shulkin on how we can all work together to keep our veterans safe and get them the care and support they and their families need.

I cannot support any bill, especially one addressing an issue as important as veterans' suicide, through this rushed process.

I ask all of my colleagues to join me in opposing H.R. 1181. Our veterans put their lives on the line for this country. We shouldn't put their lives and their families at risk when they need us most.

Mr. Speaker, I reserve the balance of my time.

Mr. ROE of Tennessee. Mr. Speaker, I yield myself such time as I may consume.

In America, the last time I looked, you are presumed innocent until proven guilty. What we have done with these veterans who have served this country, many of them injured in combat, is we have said you are guilty and you have to prove you are innocent to be able to own a firearm in your own home.

By the way, Mr. Speaker, people who are in a fiduciary status actually statistically have a slightly lower incarceration rate than veterans who are not. So to say that they are a danger to themselves or a danger to others is erroneous.

The other thing I would like to say is that the 21st Century Cures Act, Mr. Speaker, has codified basically the VA policy is what it did. It did not change the policy. What we are saying to veterans is that if you are an honorably discharged veteran who needs a fiduciary for whatever reason, you automatically lose a constitutionally guaranteed right.

I yield 2 minutes to the gentleman from Illinois (Mr. BOST), an active member of the Veterans Affairs' Committee.

Mr. BOST. Mr. Speaker, I rise today in support of the Veterans 2nd Amendment Protection Act.

It is unfortunate that under current practices, it doesn't take a doctor or a judge to determine a veteran is unfit to own a firearm. Not a doctor, not a judge; it just takes the assignment of the fiduciary.

Mr. Speaker, the women and men took an oath of office to protect and defend our Constitution—the same as we do in our offices to serve our veterans—and to stand in harm's way.

Mr. Speaker, this is exactly the opposite of what our legal system should allow. There is no due process. All of a sudden they go to the VA. They are seeking help with maybe other issues that are out there—because they can't even have a judge or a doctor make that decision, if that is the case—but they do make a decision that they have to have a fiduciary to help them with certain things.

It is vitally important that we maintain the due process. This legislation still allows for dangerous individuals to be denied their firearms, but it leaves the determination to someone with the expertise to understand their case. This is a case where bureaucracy has run amok. We have got to stop it. That is what our job here is to do.

Our Second Amendment rights are vitally important. Each amendment and those rights under our Constitution are vitally important. And for those men and women who have served to protect those rights, shouldn't we make sure that they are protected with due process.

I urge my colleagues to support H.R. 1181.

Ms. ESTY. Mr. Speaker, I yield myself such time as I may consume to respond to the assertion that there is no due process in this act and that the 21st Century Cures Act did not do anything to help veterans.

The 21st Century Cures Act codified the following due process guaranteed to veterans through the VA. Individuals are notified by the VA that a fiduciary is recommended and are allowed 30 days to respond with a notification of acceptance or contest, and they are notified of the implications that this would have for being reported to NICS. The veteran then has 60 days to present evidence against the need for a fiduciary. And as required by law, the VA relief process allows impacted individuals to maintain their fiduciary, but regain gun eligibility removing their names from NICS. These are all already processes in place.

I yield 3 minutes to the gentleman from California (Mr. TAKANO), who is the vice ranking member of the Veterans' Affairs Committee.

Mr. TAKANO. Mr. Speaker, I rise in opposition to H.R. 1181.

The epidemic—actually, rather the tragedy—of veterans' suicide has affected families across the country, including my own. I recall walking home after school at the age of 10 or 11 in the month of November—as you know, Veterans Day is in the month of November—and hearing the news that my uncle, who lived across the street from us, had taken his own life with a firearm. He was a Vietnam veteran, and his memory serves as a personal reminder about the tragedy of veterans' suicide. To this day, it continues to plague our communities with our recent conflicts in Iraq and Afghanistan.

Of the 20 veterans who die from suicide every day, two-thirds of those occur by firearm. Part of stopping this crisis is keeping guns out of the hands of our most vulnerable veterans. Removing all individuals determined by the VA to be mentally incompetent from the National Instant Criminal Background Check System will make it easier for a veteran in crisis to obtain a firearm.

To be clear, there are veterans currently flagged in the background check system who should not be there, and we

need to create a fair and streamlined process for veterans to appeal their status.

But there is a balance between protecting veterans' Second Amendment rights and protecting veterans who are a danger to themselves or others. Immediately removing restrictions on every individual does not strike the right balance. Instead, it rolls back the bipartisan work we have done through the 21st Century Cures Act, and it endangers the lives of veterans who need our help the most.

I urge my colleagues to oppose this bill.

Mr. ROE of Tennessee. Mr. Speaker, I yield 2 minutes to the gentleman from Colorado (Mr. LAMBORN).

Mr. LAMBORN. Mr. Speaker, I rise in strong support of H.R. 1181, the Veterans 2nd Amendment Protection Act. Our veterans should not lose their right to bear arms and defend themselves and their families simply because they receive health care from the VA and have someone appointed to help them with their finances.

Currently, when a veteran appoints a fiduciary to help them manage their VA benefits, the VA automatically adds the veteran's name to a list that prevents them from purchasing a firearm. It makes no sense to take away a veteran's constitutionally protected rights simply because someone else is managing their finances.

Opponents of this bill argue that dangerous or suicidal veterans could have easy access to guns if this VA process is stopped. However, the program does not make any determination on veterans' mental health or the dangers they pose to others. The VA system focuses only on whether veterans receive assistance with their finances.

The right to bear arms is too important to deprive veterans of due process without a judicial determination of whether the veteran poses a threat to themselves or others. Those who defend our Nation, whether or not they use a fiduciary to manage their benefits, are entitled to the right to defend themselves.

I urge my colleagues to support this good bill.

Ms. ESTY. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. BERA).

Mr. BERA. Mr. Speaker, I rise today in opposition of the so-called Veterans 2nd Amendment Protection Act. I agree with the chairman of the full committee that we don't want to take away Second Amendment rights from our veterans. In fact, our veterans have the skills and understanding of how to handle firearms. I think about this as a doctor, though, who has served veterans and who has worked in the VA system.

We have an epidemic on our hands right now. Every day, 20 veterans commit suicide. That is 20 too many. As someone who has sat in the exam room and listened to these veterans, if there is any evidence or risk of suicidal ideations, if there is any risk of that, I

don't want to take doctors out of this process, and that is what I am worried about here. My first job is to do no harm and to do good and help protect these veterans.

Two out of three veterans who commit suicide do so with a firearm. We have got to prevent this. This is an epidemic, and it is a national crisis, and we know gun suicides are preventable.

When we see those risks, I want to make sure I, as a doctor, have the ability to act and protect that veteran. We need to address this problem like the public health issue that it is. We need to continue to allow doctors to report the risks when they see them. It makes their patients safer, their communities safer, and it is the right thing to do.

I would love to work with my colleague, a fellow doctor and the chairman of the full committee, on making sure we protect our veterans.

Mr. ROE of Tennessee. Mr. Speaker, I yield myself such time as I may consume.

The text of this bill does not remove the names of anyone who is currently on the NICS list. It simply prohibits the VA Secretary from continuing to send the names of beneficiaries who utilize a fiduciary to the NICS list. And there is nothing in the bill that would require the VA Secretary to take any action with respect to those already on the list.

Just one other thing, Mr. Speaker, to show you how the VA's policy is not consistent: just as an example, a veteran who is rated at 100 percent disabled for PTSD is not automatically given a fiduciary, even though the symptoms required for that rating may include suicidal or homicidal ideation. So they are very inconsistent about how they do this. And of the 915,744 veterans who have a service-connected PTSD condition, only 1.7 percent of them have a fiduciary. Remember, they lose their constitutionally guaranteed right.

I yield 1½ minutes to the gentleman from Texas (Mr. FARENTHOLD), a hard-working member of this conference.

□ 1445

Mr. FARENTHOLD. Mr. Speaker, under current practice, if a veteran or beneficiary is appointed a fiduciary by the VA, they are automatically labeled as mentally defective and added to the FBI's background check system which prohibits them from purchasing a firearm. This rule fails to identify which beneficiaries have a mental illness that make them a danger, instead instituting a blanket ban on anyone who needs help managing their benefits, and it discourages veterans who need help from seeking help.

The Veterans 2nd Amendment Protection Act will prohibit the VA from considering a beneficiary just because they are assisted by a fiduciary as mentally defective without due process. Just because you have trouble managing your finances doesn't mean you are dangerously mentally ill. This

discourages veterans who may need help from seeking help.

We owe it to our veterans and to all Americans to protect the freedoms guaranteed by our Constitution and ensure that they are not taken away without due process. That is why I urge my colleagues to join me in supporting this bill.

Ms. ESTY. Mr. Speaker, may I inquire how much time I have remaining?

The SPEAKER pro tempore. The gentlewoman from Connecticut has 14 minutes remaining. The gentleman from Tennessee has 18½ minutes remaining.

Ms. ESTY. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. THOMPSON).

Mr. THOMPSON of California. I thank the gentlewoman for yielding and thank her for her leadership on this issue.

Mr. Speaker, I rise in opposition to this piece of legislation. This bill undermines our commitment to our veterans, it weakens our background check system, and it puts guns in the hands of those who shouldn't have them.

I am a combat veteran and I am a gun owner. I strongly support the Second Amendment. With responsible gun ownership comes the recognition that not everyone is mentally capable to own a gun.

Every day, 20 veterans take their own life, most of those with a firearm, so the VA acted to prevent violence and to comply with the law by keeping guns out of the hands of veterans who are in crisis. These are veterans with very serious diagnoses, including 20,000 veterans diagnosed with schizophrenia, over 11,000 with dementia, and more than 5,000 with Alzheimer's. Passing this bill would remove their names from our background check system.

This is absolute stupidity. The VA has done a good job to keep more than 174,000 veterans with serious mental health problems from getting a gun. They are working hard to save the lives of these veterans. This bill would make it easier for veterans to take their own life.

I don't want to see another veteran become a statistic. Passing this bill puts our veterans at risk. We owe them the best care and support. Sadly, this bill would leave them more vulnerable than ever. This is a dangerous overstep, and I urge every Member to seriously consider the impact this will have on our veterans, their families, and their communities.

Mr. ROE of Tennessee. Mr. Speaker, once again, let me state this for the record. The text of this bill does not remove the names of anyone who is currently on the NICS list, except it prohibits the VA Secretary from continuing to send the names of the beneficiaries who utilize a fiduciary to the NICS list.

I don't want guns in the hands of anybody who should not own a gun who

is mentally unstable, but what we are saying is that a VA rater should be a judge or a magistrate, where you can argue both sides of this in front of them. It shouldn't be a VA bureaucrat that is doing this.

I yield 2 minutes to the gentleman from Texas (Mr. CONAWAY), the chairman of the Agriculture Committee.

Mr. CONAWAY. Mr. Speaker, I rise today in support of the Veterans 2nd Amendment Protection Act, a bill that I have supported for the last several Congresses.

The Second Amendment is a constitutional right for all of us, but it is especially sacred to the men and women who put their lives on the line to protect our Constitution and our way of life. Unfortunately, under current law, many of our servicemembers who use a fiduciary to help them navigate the increasingly complicated Department of Veterans Affairs are automatically labeled as mentally defective—which, in this politically correct era, is probably not the best way to phrase them—which places them in the FBI's National Instant Criminal Background Check System.

This label wrongly denies these veterans their constitutional right to bear arms. The determination for a label of this magnitude should rest with the courts, as this bill ensures, not with a bureaucrat, as the current practice dictates.

Mr. Speaker, as our colleagues on the other side of the aisle said, they have listed some almost 40,000 people who have a clinical issue who deserve to have a conversation of the 174,000 that are on the list. What about the other 130,000?

As the other side has also admitted, it overreaches and is beyond what we should be doing. Their gratuitous offer to negotiate to fix that, they know, of course, that the current practice of just labeling folks by a bureaucrat would remain in place throughout that negotiation process if it were to ever actually occur.

All too often, government bureaucracies fail the very men and women who fought to protect this Nation; however, this bill is an easy fix to ensure that veterans aren't further hindered by Big Government bureaucracies.

I urge my colleagues to support the legislation.

Ms. ESTY. Mr. Speaker, I yield 4 minutes to the gentleman from Arizona (Mr. GALLEG0).

Mr. GALLEG0. Mr. Speaker, I rise in opposition to H.R. 1181. As a combat veteran in the Iraq war, the issues we are debating this afternoon are deeply personal to me.

Veteran suicide has reached crisis levels in this country, and our failure to do more to help veterans in desperate need of mental health care is truly shameful. Unfortunately, Republicans have brought forward a bill today that will make this crisis even worse.



Here is the plain truth. If we allow people with serious mental illnesses to purchase dangerous weapons, we are putting their lives and the lives of their loved ones at risk.

Mr. Speaker, at a time when more veterans are taking their own lives, we should be debating how to get them greater resources and support, not easier access to firearms. At least 10—10—esteemed military leaders, including David Petraeus, Michael Hayden, and Stanley McChrystal all agree. Here is what they wrote in a heartfelt letter to Congress:

“Our Nation is facing a devastating epidemic of veteran suicide. The bill you are debating comes at a time when an average of 20 veterans commit suicide each day, two-thirds of whom do so by buying a firearm.

“We know that nondeployed veterans are at a 61 percent higher risk of suicide compared to the American civilian population, and deployed veterans are at a 41 percent higher risk” than the American civilian population.

“When vulnerable veterans have access to firearms, they can do harm not only to themselves but also to their family members and loved ones. The impact of these tragedies is felt in communities across our Nation.

“The VA has submitted over 174,000 names of servicemen and -women who require a fiduciary to manage their benefits and have been determined through clear and convincing evidence to meet the Federal standard for gun prohibition.

“Of these 174,000, 19,000 are individuals that suffer from schizophrenia, and another 15,000 have severe PTSD.

“For these individuals, possession of a firearm could be fatal.”

They conclude by calling the bill before us today “irresponsible, dangerous, and life threatening to those who need access to care, not weapons,” and I couldn’t agree more with that.

The question for my Republican friends is a simple one: Do you know more about what is best for our veterans than General Hayden? Do you have a better understanding of what would improve their welfare than General McChrystal? Do you appreciate their needs more acutely than General Petraeus? If the answer is no, then you should vote “no” on this bill later today.

Mr. Speaker, if this legislation is signed into law, more veterans will take their own lives. That is the tragic reality we face. Please side with General Petraeus and General McChrystal. Side with your conscience and your values. Side with our veterans. Please vote “no.”

Mr. Speaker, I include in the RECORD a letter from the Law Center to Prevent Gun Violence regarding a summary of the effect of H.R. 1181.

LAW CENTER TO  
PREVENT GUN VIOLENCE,  
March 10, 2017.

#### MEMORANDUM

To Interested Parties.  
From Americans for Responsible Solutions.  
Re Effect of H.R. 1181 (2017): Veterans 2nd Amendment Protection Act.

#### SUMMARY

H.R. 1181, the Veterans 2nd Amendment Protection Act, would mandate that veterans determined to be mentally incompetent or incapacitated by the Veterans Administration (VA) shall not be considered to have been “adjudicated as a mental defective” for the purposes of federal firearms law without a finding by a judge or judicial authority that the veteran is a danger to self or others.

The VA has reported records to the FBI’s National Instant Criminal Background Check System (NICS) regarding more than 170,000 beneficiaries who were adjudicated as mentally incompetent under a very different standard. The vast majority of those incompetency adjudications have been made (1) without a finding of dangerousness and (2) without the involvement of a judge or judicial officer.

In short, this bill would drastically change the standard under which veteran beneficiaries may be considered “adjudicated” for the purposes of federal firearms law, and it provides no express time limitation to ensure that this new standard would not be applied to VA adjudications that occurred before enactment of this bill. As a result, there is significant concern about how this legislation would affect veterans who have previously been adjudicated as mentally incompetent by the VA, and who are, as a result, currently considered subject to federal law’s firearm prohibition.

The NICS Improvement Amendments Act of 2007 (NIAA) states that once a federal department or agency is aware that, when the basis under which a record was made available to NICS does not apply, or no longer applies, a federal agency must “update, correct, modify, or remove the record from any database that the agency maintains and makes available to the Attorney General, in accordance with the rules pertaining to that database; and (ii) notify the Attorney General that such basis no longer applies so that the National Instant Criminal Background Check System is kept up to date.” A strong argument could be made that, if H.R. 1181 were to become law, most beneficiaries who have been found to be mentally incompetent by the VA could no longer be considered subject to federal law’s firearm prohibition.

#### RELEVANT LANGUAGE

The relevant language of the bill states: “Notwithstanding any determination made by the Secretary under section 5501A of this title, in any case arising out of the administration by the Secretary of laws and benefits under this title, a person who is mentally incapacitated, deemed mentally incompetent, or experiencing an extended loss of consciousness shall not be considered adjudicated as a mental defective under subsection (d)(4) or (g)(4) of section 922 of title 18 without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such person is a danger to himself or herself or others.”

The key phrase is “in any case arising out of the administration by the Secretary of laws and benefits under this title.” This phrase determines the scope of the individuals that would be affected by this bill. It is not limited to cases that the Secretary administers subsequent to the enactment of the bill, but rather is unbounded in time.

This language could therefore be interpreted to apply to any case arising out of the administration of these laws and benefits by the Secretary, regardless of when the case occurred. If the NICS Section of the FBI follows this interpretation, it may remove records of these individuals from NICS.

This would have far-reaching impact. Currently, few if any mental incompetency determinations by the VA are made by a judge, magistrate, or judicial authority. These determinations are made by VA examiners who determine, in the course of processing veterans’ benefits claims, that as a result of as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, a beneficiary “lacks the mental capacity to contract or manage his or her own affairs” and requires a fiduciary to handle the disbursement of benefits. Because these beneficiaries require a fiduciary to handle disbursement of their payments due to mental incompetence, they are considered to “lack[] the mental capacity to . . . manage [their] own affairs . . . as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease,” and are therefore prohibited from possessing a firearm under existing federal law.

These incompetency determinations may be appealed to the VA’s administrative Board of Veterans Appeals, and then eventually to federal court, but the federal judges reviewing the case would be reviewing the VA’s finding that the veteran is mentally incompetent, and would have no basis for determining whether or not the veteran was “a danger to himself or herself or others.” Determining whether a person is a danger to self or others is generally outside the purview of the Veterans Benefits Administration or cases arising out of the administration of laws regarding veterans’ claims for benefits.

If an incompetent beneficiary seeks relief specifically from the NICS firearm prohibition, the VA must determine whether the beneficiary has proven by clear and convincing evidence that “he or she is not likely to act in a manner dangerous to self or others, and the granting of relief is not contrary to public safety and/or the public interest.” Essentially, the VA is tasked in these cases with assessing whether the beneficiary met a substantial burden of proving non-dangerousness. This does not involve a finding by a judge, magistrate, or judicial authority. Though veterans may then appeal an action by the VA denying NICS relief to a federal district court judge, that judge would be tasked with reviewing whether the evidence reasonably justified the VA’s determination that the veteran failed to provide clear and convincing evidence that he or she was not dangerous. It is not clear even in these rare cases that a judge upholding the VA’s determination would have occasion to make an affirmative finding that the person was a danger to self or others.

In short, this bill would drastically change the standard under which veteran beneficiaries may be considered “adjudicated” for the purposes of federal firearms law, and provides no express time limitation to ensure that this new standard shall not be applied to previous adjudications by the VA. It could therefore threaten to implicitly require that NICS lose nearly every prohibiting mental health record it has ever received from the VA.

#### LIMITING AMENDMENT

In order to avoid the loss of these records in NICS, we suggest amending the phrase “in any case arising out of the administration . . .” to refer only to cases arising subsequent to the enactment of this law.

Mr. ROE of Tennessee. Mr. Speaker, I yield myself such time as I may consume.

I guess by listening to the debate that is going on, one would assume that someone who has a fiduciary would be a danger to themselves and others, and I think that is completely erroneous to assume that.

Let me read you excerpts of a floor statement that Senator BURR made in 2009 to show you how this can get off track. And we are going to put sort of a human face on this, just an excerpt from a letter that Jennifer wrote as the wife of Corey.

"Corey served in Iraq. He was a paramedic. He was severely injured by an IED explosion in 2004, which caused severe burns, damage to his lungs, and severe traumatic brain injury after shrapnel entered his skull. Corey spent . . . 5 years recovering from his injuries. Jennifer reports that he is walking, talking, and enjoying life at home with his two children.

"Now it gets really sad. Because of his head injury, Corey still requires help with certain things. The VA said he needed help managing his disability compensation payments, and they named Jennifer, his spouse, as his fiduciary"—his wife. "That is where I would like to read you her letter. Again, I quote from the letter:

"On May 19, 2009, we had our annual fiduciary meeting with the VA field examiner. At the end of the meeting, our field examiner said he needed to read a statement to us. He read the Brady Bill statement and then stated that Corey can't own, possess, use, be around, et cetera, any firearms. He then went on to say that anyone in our household can't own a gun while living in this household.

"I asked him about Corey going on adaptive hunting trips and he said he couldn't. Corey stated that he had a gun that was handed down from his grandfather and that Corey was going to hand it down to his son, and the field examiner told him that he couldn't have it. He stated to Corey that if he did own a gun or be around a gun that he would be threatened with imprisonment.

"The way that that field examiner talked to Corey about this issue was not appropriate. The field examiner said that I could challenge it and handed me a blank sheet of paper with a VA heading. I asked the field examiner for the statement that he read to me, but he said that he had to ask his boss if he could actually provide a copy of that statement. After 2 weeks of me emailing him, I finally got the attached papers in the mail. I think the VA is taking this way out of concept, and I would greatly appreciate your support."

"Well, in case any of my colleagues think the government would never prosecute someone like Corey for possession of a firearm, being around a firearm, I wish to read to my colleagues excerpts from the VA directive

that went out to all VA regional offices on September 29, 2009, on this very issue.

"The directive is meant to inform fiduciary field examiners of their obligation if they were to witness a violation of the Brady Act. I am going to quote from this VA memorandum to the field examiners.

"Field examiners or other VA employees who encounter beneficiaries believed to be in violation of the Brady Act are required to notify the fiduciary activity manager as soon as safely possible. At no time should the employee place him/herself in danger. The fiduciary activity manager at the VA regional office of jurisdiction must immediately report the alleged violation to the Bureau of Alcohol, Tobacco and Firearms," and here is the number.

And that is straight out of their memorandum, Mr. Speaker.

We don't want weapons, no one in this room, and none of my colleagues on the VA Committee, Republican or Democrat, want weapons in the hands of someone that is considered dangerous. But we have American heroes that are being denied their Second Amendment right to even keep their grandfather's gun. I feel that, if you want to go and have your due process rights in front of a court of law or magistrate, that is perfectly okay. That is the way our system works. But not a VA rater. They don't get to do that. And I think, by passing this bill, we will guarantee those rights to our American heroes.

I reserve the balance of my time.

Ms. ESTY. Mr. Speaker, I yield 3 minutes to the gentleman from Maryland (Mr. BROWN).

Mr. BROWN of Maryland. Mr. Speaker, I would like to thank my colleague from Connecticut for yielding me time.

Mr. Speaker, I rise today in opposition to H.R. 1181, which has very little, if anything, to do with protecting veterans' Second Amendment rights as the bill's title suggests.

I am a 30-year veteran of the United States Army. I served in Iraq. I have led soldiers in both combat support and combat service support units in the active and reserve components.

Our servicemen and -women face harsh realities in harsh environments—not just in wartime, but in peacetime as well. Military life, Mr. Speaker, is a hard life during war and in peace. It takes a toll on the body and the mind. The number of military members seeking mental and behavioral health services in the last 16 years, as well as the mental health-related incidences involving soldiers and veterans, substantiates my point.

But our soldiers are resilient, and that is no less true when we take off the uniform.

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But for many of our veterans, it might take some extra help, some extra time, to recover from that harsh and sometimes traumatic military experience.

As a nation, we must support our veterans in recovering from that experience not only by providing the benefits they deserve, but by protecting their right to enjoy the rights that they have defended.

But, Mr. Speaker, H.R. 1181 misses the mark. When a determination is made that a veteran is mentally incompetent or incapacitated, for whatever reason, that determination is made to protect them, not to punish or deprive them. When that determination is made, we owe it to our veterans not to put a weapon in their hand, but, rather, to put the full weight of a responsive mental health system at their disposal.

We entrusted our soldiers with a weapon while in uniform, so let's treat our veterans with the same expectations and standards of safety when they take off the uniform. If the unintended consequences of the current law, as the bill's supporters claim, are too broad and disqualified too many of our veterans from responsible gun ownership, then let's work together to tackle that issue.

However, this bill goes too far and would prohibit the VA Secretary from sharing important information with law enforcement on veterans who might be a danger to themselves or to others.

Unfortunately, Mr. Speaker, H.R. 1181 misses the mark and ignores the responsibility to safeguard and take care of our veterans who have sacrificed so much to protect our Nation.

Mr. Speaker, I include in the RECORD three documents, and they are the testimony of Brigadier General Xenakis, an op-ed from General Chiarelli, as well as testimony submitted by Jeffrey Swanson.

TESTIMONY OF BRIGADIER GENERAL (RET)  
STEPHEN N. XENAKIS, MD

ERIK ERIKSON SCHOLAR, THE AUSTEN RIGGS  
CENTER

Subcommittee on Disability Assistance and  
Memorial Affairs, Hearing June 24, 2015

H.R. 2001—Veterans 2nd Amendment  
Protection Act

Thank you to the Committee for this opportunity to submit testimony regarding H.R. 2001—Veterans 2nd Amendment Protection Act. I am Dr. Stephen Xenakis, retired Brigadier General and Army Medical Corps Officer, with 28 years of active military service. I am certified by the American Board of Psychiatry and Neurology in General Psychiatry and Child and Adolescent Psychiatry, and have dedicated my professional career to providing medical and psychiatric care to our soldiers and veterans and sustaining the readiness of our fighting force. First and foremost, I am dedicated to improving and protecting their health and wellbeing, and therefore urge the committee not to pass H.R. 2001—Veterans 2nd Amendment Protection Act (H.R. 2001) in its current form.

Under the current process, if a veteran is determined to be incapable of managing his or her disbursement of funds from the Veterans Benefits Administration (VBA), the veteran is assigned a fiduciary, categorized as mentally incompetent, considered "adjudicated mental defective," and therefore prohibited from purchasing or possessing firearms. In its current form, H.R. 2001 would



change the process, stating those who are deemed mentally incompetent by the Department of Veterans Affairs' (VA) would NOT be considered adjudicated mental defective "without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such person is a danger to himself or herself or others. The result being, individuals who are currently prohibited from purchasing or possessing firearms, because of a VBA fiduciary finding, would no longer be prohibited.

Though I concur that there is room for improvement in the VA interpretation of the mentally incompetent determination, H.R. 2001 is misguided in its approach. Yes, there may be individuals who have been swept into the "adjudicated mental defective" category because they need assistance managing their disbursement of VBA funds and for whom firearms access would not pose a risk to themselves or anyone else. However, there are also individuals in this category for whom access to a firearm would indeed be dangerous. Therefore restoring firearms in the sweeping manner to everyone declared mentally incompetent by the VA, as H.R. 2001 would do, would put our veterans, and citizens, in harm's way.

To discuss H.R. 2001 is to discuss this country's veteran suicide crisis, and to discuss suicide is to discuss access to firearms. The high suicide rate among the veteran population is devastating; a 2012 report from the VA reported an estimated 22 veterans per day commit suicide. Data shows recent veterans who were on active duty during the wars in Iraq and Afghanistan have a marked increased risk of suicide compared to the general population (41% higher suicide risk among deployed veterans; 61% higher risk among those non-deployed). Access to firearms is a significant part of the problem; a study of male veterans found that veterans were more likely than non-veterans to use firearms as a means to suicide. Research shows firearms are the most lethal means to suicide; an estimated 85% of suicide attempts using a firearm are fatal, compared to 2% by poisoning or overdose, or 1% by cutting.

The evidence is strong and paints a grim picture—suicide is a serious public health problem. According to 2013 data from the Centers for Disease Control and Prevention, suicide is the 10th leading cause of death for all age groups. Suicide is the second leading cause of death for those age 25–34, ahead of heart disease, liver disease, or HIV. Over half of the 41,149 suicides in 2013 were by firearm.

Our society can mitigate this problem however with smart policies and practices. We should take a page out of the military training manuals. The military trains us to think "safety first" and avoid unnecessary harm and injury. It is our standard practice among military psychiatrists to confront a potentially suicidal soldier and intervene aggressively to protect the soldier and the family. I routinely ask—"do you have weapons, where are they, what can you and your family do now to keep you and them safe?" As such, it is absolutely crucial, that any veteran who has been deemed mentally incompetent by the VBA go through an individualized process to restore his or her firearms rights, including an assessment for risk to self and others consistent with best medical practices, to ensure that the veteran would not constitute a danger to the self or others going forward. Such a process is not outlined in H.R. 2001 and, therefore, I urge the committee not to pass the amendment in its current form.

[From The Hill, Mar. 16, 2017]

#### GIVE OUR VETERANS CONSIDERING SUICIDE HELP, NOT A GUN

(By Gen. Peter W. Chiarelli, retired)

As the Army's vice chief of staff, I spent much of my time working on a crisis most Americans don't even realize exists. A crisis that on average takes the lives of 20 American veterans each day: the devastating epidemic of veteran suicide.

Our brave men and women in uniform risk their lives daily to make America safer. But for many, when they return home, the battles they face are far from over. The stress of repeated deployments, failed relationships, financial challenges, depression and PTSD are among the reasons that every year roughly 7,000 veterans take their own life. Two-thirds of the time they do so by gun.

Researchers who study suicides have found that the decision to end one's life is often spontaneous, and that if accessible, guns are the most lethal and common way one commits suicide. For this reason, eliminating easy access to a gun during a mental health crisis can mean the difference between life and death.

Knowing this, I am shocked that some in Congress are currently supporting a new piece of misguided and dangerous legislation that would make it easier for veterans who are at risk of facing a mental health crisis to get their hands on a gun. Congress should be working to save lives and to guarantee that all veterans have access to world-class medical care and counseling, not making it easier for those suffering from the hidden wounds of war to end their lives.

We have to do better. And as someone who has spent years working to reform our mental health system and to reduce veteran suicides, I know we can.

Shortly after the tragedy at Virginia Tech, Congress passed, and President Bush signed, bipartisan legislation requiring the Department of Veterans Affairs to send the names of veterans who have clear and convincing evidence of mental incompetency to the National Instant Criminal Background Checks System. Any person listed within this system is ineligible to legally purchase firearms from a licensed dealer.

The legislation that Congress is currently considering would reverse this law, and would immediately remove more than 174,000 mental health records from the background check system. The records that would be removed include veterans who are prohibited from obtaining guns because they are suffering from serious mental illnesses like dementia, schizophrenia, and long-term severe posttraumatic stress.

We know that reducing veteran suicide is a complicated issue that requires comprehensive solutions. That said, providing veterans who struggle with mental illness increased access to a gun is not part of that solution.

Congress should instead focus on more supportive gun-focused legislation like making it easier for family and friends to help their loved ones in crisis. Most states currently lack laws that enable family and friends to contact law enforcement and remove firearms from individuals who pose a threat to themselves or others. Gaps like these in our laws help explain why since 1968, more Americans have died from guns in the United States than on battlefields of all the wars in our country's history.

Still, there are some who will mislabel these responsible policies as efforts to strip our veterans of their rights without due process. They could not be more wrong. In fact, there is already a law on the books that ensures any veteran on the prohibited purchaser list has a right to a hearing where they can present evidence regarding his or

her mental capability. That's important. The current system works.

Last year, I joined former Congresswoman Gabrielle Giffords, her husband, Navy combat veteran and retired NASA astronaut Capt. Mark Kelly, and a long list of the nation's most prominent retired military officials to launch the Veterans Coalition for Common Sense. It is a national initiative of distinguished veterans from all branches and ranks of the military who are committed to advancing commonsense solutions to gun violence here at home. While respecting the Second Amendment rights of law-abiding Americans, our focus is to help keep guns out of the wrong hands, and saves lives.

Throughout the course of my nearly four decades of service to our nation, I saw first hand the incredible power of firearms and the dangers they pose when they end up in the hands of people who should not have them.

Every day while deployed, our brave men and women in uniform risk their lives to protect our freedom, and when they return, we should protect theirs. Congress has a duty to ensure these heroes' safety and they can do so through rational and honorable gun safety legislation. Our veterans in crisis need our help, not a gun.

TESTIMONY SUBMITTED BY JEFFREY SWANSON,  
PHD AND RICHARD BONNIE, LLB

Subcommittee on Disability Assistance and Memorial Affairs, Hearing, June 24, 2015, H.R. 2001—Veterans 2nd Amendment Protection Act

We thank the Committee for this opportunity to submit testimony regarding H.R. 2001: Veterans 2nd Amendment Protection Act.

The Veterans 2nd Amendment Protection Act (H.R. 2001) addresses an important concern of fairness in a policy that is intended to protect veterans but may infringe their rights without sufficient due process. The policy in question is VA's current practice of reporting to the FBI's National Instant Criminal Background Check System (NICS) the names of veterans who are assigned a fiduciary to assist the veteran in managing their benefit funds. What is controversial about this is that VA decides, in a rather opaque administrative procedure, who gets a "fiduciary"—and thus, indirectly, who is put into NICS—without assessing whether a financially-challenged veteran is at risk of harm to self or others. This decision occurs without a hearing before either a judge or other objective, duly authorized administrative officer in which the facts of the matter could be presented and challenged.

Over the past several years, VA has reported the names of about 100,000 "incompetent beneficiaries" to the NICS—the database that licensed gun dealers query to determine whether people trying to buy a gun can legally do so. The proposed law, H.R. 2001, would remove these veterans' names from NICS and would uncouple the loss of gun rights from routine assignment of VA fiduciaries in the future. Would such changes be good or bad for veterans, or for the public? Our testimony offers some background information and research evidence to help legislators evaluate VA's fiduciary/gun-restriction policy and consider the possible advantages and drawbacks of rescinding it.

The Department of Veterans Affairs did not invent the idea of removing gun rights from people found incompetent to manage their money; the policy was apparently initiated to implement the 1968 federal Gun Control Act, which banned the possession of firearms by certain categories of persons assumed to be dangerous, including anyone "adjudicated as a mental defective." The archaic phrase gives offense to modern ears

and lacks clinical meaning, but the Department of Justice (DOJ) has defined it specifically to include anyone who “lacks the mental capacity to contract or manage his or her own affairs” as determined by some lawful authority. According to current VA procedure, military veterans fall under this broad gun-disqualifying definition whenever the VA finds them to be financially incompetent and in need of a third-party “fiduciary” to manage VA benefit funds.

VA’s assignment of fiduciaries is made through an administrative process within the Veterans Benefits Administration (VBA), and without the requirement of either a formal evaluation of decision-making capacity by a healthcare professional or a genuine opportunity for a fair hearing for adjudicating the question of financial capacity as defined in the DOJ regulations. These strong due process objections to the VA’s policy are clearly the main concern underlying H.R. 2001. The argument is mainly about procedure, and we have serious doubts about whether VA’s current way of assigning fiduciaries actually meets the definition of “adjudicated as a mental defective” under the Gun Control Act. But it is worth asking whether this procedurally flawed policy is also substantively flawed. Is there a public-safety rationale for attaching gun rights to the fiduciary standard? What do we know about the relationship between the ability to manage money and risk of harm to self or others? Is there even a connection?

Recent research on post-deployment adjustment of Iraq and Afghanistan war veterans has found a modest statistical correlation between a measure of financial decision-making capacity and self-reported suicidality and interpersonal violent behavior. In a nationally representative random sample of 1,388 separated veterans and reservists from the era of our recent wars, participants were tested on basic money management skills and also queried about violence and suicidal behavior and thoughts. Veterans who scored poorly on financial management abilities were about twice as likely to report serious acts of violence, arrest, suicidal behavior, and use of illicit drugs, compared to those with good money management skills. These differences in relative risk associated with financial incapacity were statistically significant, even though the majority of veterans with financial incapacity were not violent or suicidal. Other research, on civilians with psychiatric disabilities who were found incompetent to manage their Supplemental Security Income (SSI) benefits, founds that assignment of a family member as a “representative payee” was significantly associated with increased risk of violent acts by the incompetent beneficiary against family members.

Does the fiduciary gun-restriction policy, as it stands, effectively prevent firearm-related violence and suicide among veterans? The full answer to that question is unknown, but the population impact of the policy is inherently limited by the very small proportion of at-risk individuals that it affects, considering the entire veteran population of approximately 22 million. There are undoubtedly better and more efficient, effective, comprehensive, and carefully-tailored ways to keep guns out of the hands of dangerous people than reporting a relatively small number of putatively financially incompetent veteran beneficiaries to the NICS.

But what about the 100,000 veterans who are already in NICS because they were assigned a fiduciary? What are the implications, for them and their families, of automatically restoring their gun rights without any case-by-case review? Unfortunately, there is little information publically available about the population of incompetent

veterans who have already been reported to the NICS. However, we do know something about the distribution of psychiatric diagnoses of veterans in NICS, which are typically the diagnoses for which the veterans are receiving VA benefits: approximately 20,000 of the group—1 in 5 of those in NICS—have a diagnosis of schizophrenia or other psychotic illness, and about half of those have a “paranoid type” of schizophrenia, which is typified by delusions of persecution and threat from others.

Do these mental health conditions significantly elevate the risk of violence and suicide and thereby justify legal restrictions on gun access? Sometimes, and it depends. Epidemiological studies of people with schizophrenia in the general community have found that the large majority are not violent towards others, but that the subgroup with acute symptoms of excessive and irrational threat perception—such as believing that others are “out to get me”—are significantly more likely to be violent towards others.

Also in NICS are about 23,000 veterans diagnosed with posttraumatic stress disorder and about 15,000 (mostly older) veterans suffering from dementia with underlying causes ranging from Alzheimer’s disease to traumatic brain injury research literature would suggest that both of these groups of veterans, too, carry some elevated risk of suicide or irresponsible behavior with firearms. Still, all of these diagnostic categories function as nonspecific risk factors for gun violence and suicide; there are many more people with these diagnoses who will not harm anyone than who will. That is because violence and suicide are caused by many interacting factors—mental illness being only one—and people with mental illness may carry other risk and protective factors for dangerous behavior. It is just the magnitude of the thing being prevented—death by a gun—that might justify limiting the rights of so many people who would not turn out to be violent in any case.

Civil rights advocates and gun violence prevention experts could each find fault with a policy that infringes the constitutional rights of so many while having only modest impact, at best, on gun violence and suicide. Hence, the criticism that animates H.R. 2001: that the VA’s fiduciary/gun policy, without due process, precludes access to firearms by people who have not been shown to pose any particular risk of harming anyone. To make matters seem even more unfair, those “incompetent beneficiaries” reported by VA to the NICS have been subjected to different treatment than similarly-situated civilian counterparts. For instance, incompetent Supplemental Security Income (SSI) beneficiaries with “representative payees” assigned by the Social Security Administration do not similarly lose gun rights. Further, when states report “incompetent” individuals to NICS, it is because a state court has determined mental incompetency in a formal adjudicatory procedure—one that relies on expert clinical testimony and offers due process protections commensurate with the important rights at stake.

In the end, what would H.R. 2001 accomplish from the veteran’s point of view? Mainly, it would mean that VA’s appointment of a fiduciary to manage one’s VA benefits would no longer be used, by itself, as a predicate for denying the veteran the right to purchase and possess a gun. This would reform the VA’s arguably flawed policy going forward. However, the problem addressed by H.R. 2001 is more complicated in two ways. First, it is necessary for the VA to take appropriate steps to facilitate NICS reporting for veterans receiving mental health care in the VA system who are found by a lawful judicial or administrative authority to pose a

danger to themselves or others. For example, the VHA could decide to report to NICS all involuntary commitments to VA hospitals; this would fill a gap created by the current inconsistent NICS-reporting practices of state civil courts and public mental health authorities.

Second, it is necessary to address the fate of the 100,000 veterans who are already in NICS. Some of these veterans are disqualified under other criteria because, for example, they have been involuntarily committed or convicted of a felony or domestic violence misdemeanor, with corresponding additional records in the NICS. However, should the gun rights of all of the remaining veterans in this group be automatically restored by retroactively invalidating the VA’s past actions? From the limited available data, it seems likely that automatically restoring all of these individuals’ gun rights will provide legal access to firearms for at least some veterans who do, in fact, pose a danger to themselves or others. Therefore, for veterans already in the NICS because of a fiduciary determination by the VA, perhaps some level of systematic review on the question of dangerousness, with due process overseen by a federal court, might provide some needed protection and peace of mind—for the veterans themselves, as well as for their families and communities.

Mr. ROE of Tennessee. Mr. Speaker, I yield myself such time as I may consume.

I include in the RECORD two documents from the VFW and The American Legion supporting this legislation.

VETERANS OF FOREIGN WARS  
OF THE UNITED STATES,  
March 8, 2017.

Hon. DAVID P. ROE,  
Chairman, House Veterans’ Affairs Committee,  
Washington, DC.

DEAR CHAIRMAN ROE: On behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliary, I am pleased to offer the VFW’s support for H.R. 1181, the Veterans 2nd Amendment Protection Act.

It is unconscionable to require veterans to choose between the care they have earned and deserve and their constitutional rights. Your legislation would ensure veterans who suffer from mental health conditions no longer have to worry about losing their 2nd amendment rights when seeking potentially lifesaving mental health care. By elevating the threshold for inclusion in the National Instant Criminal Background Check System, this important legislation would help destigmatize mental health and protect veterans’ constitutional rights.

The VFW commends your leadership on this issue and your commitment to our nation’s veterans. We look forward to working with you to ensure the passage of this important legislation.

Sincerely,

CARLOS U. FUENTES,  
Director,  
VFW National Legislative Service.

—  
THE AMERICAN LEGION,  
Washington, DC, March 2, 2017.

Hon. PHIL ROE,  
House of Representatives,  
Washington, DC.

DEAR REPRESENTATIVE ROE: On behalf of our more than 2.2 million members, The American Legion expresses support for HR 1181, the Veterans 2nd Amendment Protection Act. This measure, as currently written, would prohibit the Department of Veterans Affairs (VA) from considering any beneficiary assisted by a fiduciary as “mentally

defective" without a magistrate or judicial authority ruling that the beneficiary is a public danger for the purpose of reporting their names to the National Instant Criminal Background Check System (NICS), or any other database intended to identify persons who would be excluded from keeping, possessing, or purchasing firearms.

Veterans are not required to give up their weapons for the purpose of receiving VA health care for mental health conditions. However, there are concerns that the threat of being placed on a list that might deny veterans their Second Amendment rights could act as a deterrent for those who might otherwise seek treatment for their mental health conditions. The American Legion's concern is that stigmas associated with mental illnesses may force veterans to lose their Second Amendment rights.

The American Legion reaffirms its recognition that the Second Amendment of the United States Constitution guarantees each law-abiding American citizen the right to keep and bear arms and encourages our nation's lawmakers to recognize the same. The men and women who have fought to protect the Constitution deserve to live under both its laws and rights.

In conclusion, The American Legion applauds your leadership in addressing issues that are important to America's servicemembers, veterans and their families.

Sincerely,

CHARLES E. SCHMIDT,  
*National Commander.*

Mr. ROE of Tennessee. Mr. Speaker, I, too, served in the military as a military doctor in the 2nd United States Infantry Division in Southeast Asia many years ago, so I have seen patients who were mentally ill. One of the things that has bothered me is that we are perpetuating an outdated stereotype that mentally ill people are prone to violence. Most are not, and perpetuating this stereotype that they are may result in their being isolated or not seeking treatment. This is unfortunate for people who suffer from mental illness and need support and understanding.

I think we do them a great disservice. My bill would require a court of law rather than a VA rating specialist—that is all we are saying here—to determine whether an individual actually poses a danger to themselves or others before their name gets sent to the FBI and added to the NICS list. A VA employee should not be able to add a veteran's name to a NICS list before that veteran has been afforded due process.

Let me explain how bad it really is. It is outrageous that a criminal has more rights than a veteran when it comes to being placed on the NICS list—at least they aren't added to the list until they have been convicted by a judge or a jury, Mr. Speaker. We should at least treat our American heroes that well.

Here is another point I would like to make: a veteran that has been rated—listening to the debate to show you how the VA system is not a standard for everyone. A VA veteran rated 100 percent for PTSD does not automatically get a fiduciary because they are 100 percent service-connected disabled because of their service even though

the symptoms require that, for that rating, it may include suicidal or homicidal ideation.

All we are saying—and I think, hopefully, everyone would agree—is that you deserve as an American citizen—and especially an American citizen, Mr. Speaker, who has served this country whether in combat or not, who has served his country in the military—your day in court and at least be heard by a judge and jury.

Mr. Speaker, I reserve the balance of my time.

Ms. ESTY. Mr. Speaker, may I inquire how much time I have remaining?

The SPEAKER pro tempore (Mr. ROGERS of Kentucky). The gentleman has 6½ minutes remaining.

Ms. ESTY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I note that the chairman noted the support of some of the veteran service organizations, and I think it is noteworthy that the IAVA, the Iraq and Afghanistan Veterans of America, has in the past supported this bill. They do not support it this year. They do not because they are so concerned about the crisis we are facing, particularly in their members—those who have come back from the wars in the last 10 or 20 years. They are concerned about that veteran suicide crisis that we are facing and are concerned that this bill might make that worse.

We have heard repeatedly assertions that this would be the only category, that veterans alone would be deprived without adjudication. That is not true. In fact, the law for the firearms prohibitor covers many categories of people who do not have any legal determination:

Anyone who is an unlawful user or addicted to a controlled substance is prohibited, does not require any adjudication.

The NICS has 23,000 people who are prohibited under the controlled substance addiction and use category. Anyone adjudicated as mentally defective or committed to a mental institution, there are 4.2 million people. There are a wide variety of people who are in that category, again, many without court orders. Those were aliens, those dishonorably discharged from the Armed Forces, that is 10,000 individuals. So it is not unique to veterans. There are other categories as well.

But I really think the bottom line is this: we have heard a great deal of agreement that we care about our veterans, we want to prevent military suicides, and we know that for some of these veterans, it would be dangerous for them to have a firearm. That is precisely why this committee should have had a hearing, so we would have had the opportunity to systematically address these issues and find a better way forward that recognizes that some veterans who need a fiduciary also should not have firearms, and some who need a fiduciary, there is no concern there. But we have been deprived of that opportunity in committee, to do the work

we should be doing in committee, to work together in a bipartisan way to fashion a better way forward.

This is way too far. It is an overreaction to a process that should be fixed, and we are committed to do that. But the alternative we are presented with today will wholesale uproot the 20-year process of the Veterans Administration that would be dangerous and wrong, and we remain committed to working together in committee.

Mr. Speaker, I reserve the balance of my time.

Mr. ROE of Tennessee. How much time do I have remaining, Mr. Speaker?

The SPEAKER pro tempore. The gentleman has 10 minutes remaining.

Mr. ROE of Tennessee. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this proposal is not new. It has been passed out of committee in 2010, 2011, 2013, and this year. It passed the full House, H.R. 2349, in the 112th Congress, which is included in this proposal, by a voice vote.

On February 2, the House approved H.J. Res. 40, which nullified the Social Security Administration rule that would have similarly restricted the Second Amendment rights to certain disabled people who require help managing their finances. There is no reason that veterans who have fiduciaries should be treated any differently than Social Security beneficiaries who need help managing their finances.

Next, Mr. Speaker, veterans who need fiduciaries are not necessarily mentally ill. A veteran may not be able to handle his or her finances due to conditions such as traumatic brain injury. Furthermore, The American Legion testified in 2015 about a case in which the VA declared a veteran incompetent because he told his doctor he didn't pay his bills. But, in reality, the veteran didn't pay his bills because, like a lot of us, of the division of household responsibilities. His wife paid the bills, and he got caught up in that. Then to get out of it is a chore.

I wanted to say, once again, I really feel strongly about this because we worked on the 21st Century Cures bill on removing the stigma of mentally ill people that because someone is mentally ill, they are a danger to themselves or others. Perpetuating this stereotype, I think, is dangerous. I think it keeps people from coming in and seeking the help that they need.

Also, and I have participated in this, Mr. Speaker, at home where we have used hunting trips or fishing trips to help veterans with PTSD get back on their feet and assume—instead of treating it as a disability and saying: We are going to get you well and back on your feet and be a productive member of society.

I am afraid if we stereotype this, we will prevent people from coming in for the very needed help that they so richly have earned and need.

Mr. Speaker, I reserve the balance of my time.

Ms. ESTY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I note that 18 of the 26 Members of the House Veterans' Affairs Committee did not serve during a time when there has been a hearing on this bill—18 of us, and that includes me. The evidence that the chairman was referencing from 2015 was from a hearing that never occurred, so there was never an opportunity to discuss that evidence. Again, I think this underscores the extent to which we really do need a hearing.

I have to say, since 2012, when the Newtown shootings occurred in my district, the public feels differently about this now, and our veterans numbers have been going up and up. So I think it is high time for us to have a hearing. It has been 5 years. We should be looking at this process.

The last point I will note: there has been much made of the Constitution today and how outrageous it is. In 20 years since this process has been in place in the VA, I note that no one has ever challenged this successfully in court as a violation of constitutional due process, and I know the love our veterans have for the Constitution, as we do in this Chamber. That tells me that many families, for example, actually are relying on this.

So, again, I pledge to the chairman we should be working together in committee to get this process right. This is not the way to do it, not with this bill, not with the questions, and not without an opportunity for us to do the things I have referenced.

Mr. Speaker, I reserve the balance of my time.

Mr. ROE of Tennessee. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as all of us in this incredible place that we are in, the House of Representatives in the Capitol of the U.S., our hearts go out to everyone, especially the families, of all those touched by that horrible tragedy that was just described. I am willing to work with anyone on the committee or otherwise in a reasonable way to keep firearms out of the hands of criminals and people who are dangerous. There is no question we are all willing to do that. But that case did not involve a veteran who had a fiduciary.

I am a strong supporter of the Second Amendment even if others aren't. I think we can all agree that veterans should not be denied the same due process rights that all other Americans receive. What this bill does is ensure that veterans do not lose their constitutional rights without a judicial hearing.

The freedoms granted under the Constitution of this great country should apply to all Americans, especially those who have been willing to put their lives at risk to protect those same freedoms. It is wrong for veterans and beneficiaries who use a fiduciary to lose their Second Amendment right without due process.

This commonsense bill would ensure that no veteran or beneficiary is declared mentally defective simply because a VA rater appoints someone to assist with the management of that person's financial affairs.

Mr. Speaker, I reserve the balance of my time.

Ms. ESTY. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, we have heard spirited and passionate remarks here today, but I think it underscores how much we would benefit, the veterans that we serve would benefit, their families, and this Chamber would benefit from our pursuing regular order with this very important topic. So, again, I urge in the strongest possible terms for my colleagues to vote against this bill, to give us the opportunity to get this process right, to safeguard our veterans, protect them from military suicide, and to preserve their rights in the best possible way. This hastily considered, rushed-through legislation that leaves way too many questions and way too much risk for our veterans I must strongly oppose.

Mr. Speaker, I yield back the balance of my time.

Mr. ROE of Tennessee. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, as all of us in this room are, I am personally devastated that our Nation loses 20 of our finest citizens to suicide every day. Ending this tragedy is one of the top priorities we have on the Veteran Affairs' Committee and as a nation. We have and will continue to work with the VA to develop programs that will effectively help identify and treat veterans who may be considering ending their own lives.

But denying veterans who have fiduciaries their constitutional rights will not end veteran suicide. It is unfair to paint all veterans who may need a fiduciary with the same broad stroke and to assume that just because someone needs assistance with their financial affairs, that they may also be violent and a danger or they are contemplating suicide. That is just plain wrong.

□ 1515

It is unfortunate that the arguments advanced by some of the opponents of this bill reinforce the false impression that people who suffer from mental health challenges—and veterans, in particular—are dangerous. There is no evidence that people who suffer from mental illness are more likely to be more violent than people in the general population—just none. I am convinced that perpetuating this outdated and incorrect stereotype makes the situation worse, deterring people from seeking the very health services that they need.

It is difficult for some folks to admit they need help. I saw patients like that for years who finally broke down in my office and explained that they were depressed or whatever the situation may be. Imagine how much harder it is

when people feel that they will be stigmatized or isolated because other people may fear them?

By passing this bill, Congress will send a strong message that people who suffer from mental illness are owed the same respect and have the same constitutional rights as every other American citizen.

Once again, Mr. Speaker, I encourage all of our Members to support H.R. 1181, and I yield back the balance of my time.

Ms. WASSERMAN SCHULTZ. Mr. Speaker, I stand in strong opposition to H.R. 1181, the "so-called" Veterans 2nd Amendment Protection Act.

Mr. Speaker, twenty veterans a day tragically take their own lives.

Just ONE veteran taking his or her own life is one too many.

But twenty every day is an epidemic. It is unconscionable, and unacceptable.

With two-thirds of veteran suicides being carried out with firearms, this bill practically pulls the trigger for veterans at risk.

H.R. 1181 threatens the safety of our nation's veterans and potentially others; by providing those veterans suffering from mental illness with greater ease in obtaining a firearm.

The National Instant Criminal Background Check System is a critical tool in stopping those who want to do harm to themselves or others.

If passed, this bill would dangerously alter the protocols for including a veteran in the database when he or she has been assigned a fiduciary.

In addition, over one hundred-seventy thousand mentally ill veterans would be removed from the National Instant Criminal Background Check System.

Instead of wasting time and energy on senseless budget cuts and harmful bills like H.R. 1181, this Congress should be focused on strengthening protocols so that no veteran struggling with mental illness ever falls through the cracks.

Just two months ago, a veteran, Esteban Santiago, suffering from mental illness fell through the cracks and killed five people at my home airport in Fort Lauderdale.

The current protocols failed him. We failed him and we should be doing all that we can to make the system strong for those suffering—not making the situation worse, as this bill does.

This bill does a grave disservice to those men and women who have served us valiantly.

Moreover, it is opposed by military leaders including General Stanley McChrystal and General David Petraeus, who led our troops in Iraq and Afghanistan.

It is our obligation to ensure every veteran has the physical and mental health care they both deserve and need. We owe them better than this. Instead, this bill prioritizes putting firearms in the hands of mentally ill veterans who are already at serious risk.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 198, the previous question is ordered on the bill.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ROE of Tennessee. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

## VA ACCOUNTABILITY FIRST ACT OF 2017

### GENERAL LEAVE

Mr. ROE of Tennessee. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to insert extraneous material in the RECORD on H.R. 1259.

The SPEAKER pro tempore (Mr. BANKS of Indiana). Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The SPEAKER pro tempore. Pursuant to House Resolution 198 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 1259.

The Chair appoints the gentleman from Kentucky (Mr. ROGERS) to preside over the Committee of the Whole.

□ 1518

### IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 1259) to amend title 38, United States Code, to provide for the removal or demotion of employees of the Department of Veterans Affairs based on performance or misconduct, and for other purposes, with Mr. ROGERS of Kentucky in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered read the first time.

The gentleman from Tennessee (Mr. ROE) and the gentleman from Minnesota (Mr. WALZ) each will control 30 minutes.

The Chair recognizes the gentleman from Tennessee.

Mr. ROE of Tennessee. Mr. Chair, I yield myself such time as I may consume.

Mr. Chair, I rise today in support of my bill, H.R. 1259, the VA Accountability First Act of 2017.

Mr. Chair, you and many other Members of this body are well aware that providing true accountability at the Department of Veterans Affairs has been a goal of mine and many of my colleagues for years. The House has remained committed to this goal and has already passed several iterations of the legislation before us today, yet the challenges remain, which is why we are here once again trying in this Congress to effect real change and reform.

To bring real reform, we need to provide Secretary Shulkin with the tools he needs to swiftly and effectively discipline employees who don't meet the standards our veterans deserve or who fail in their sacred mission to provide world-class health care and benefits to the men and women who have served.

My bill would provide a singular expedited procedure for all VA employees to respond and appeal to proposed removals, demotions, and suspensions for performance or misconduct or, in the case of title 38 employees, who are healthcare providers, for a question involving direct patient care or clinical competence.

The prenotification and response process would be required to be completed within 15 business days, and the employee would be entitled to an expedited appeal to the Merit Systems Protection Board, where the first step at the administrative judge would be limited to 45 days. Additionally, either party would be able to appeal the administrative judge's decision to the full MSPB and would be provided the opportunity for limited judicial review.

H.R. 1259 would also ensure that the disciplinary procedures and avenues to appeal set up by this bill are the only avenues in place for title 5 and hybrid title 38 employees to dispute proposed removals, demotions, and suspensions for longer than 14 days. Pure title 38 employees, mainly VA's physicians and registered nurses, would retain their current internal process, but the timelines for disciplinary action and the appeals process would also be aligned to the timelines for all other VA employees as set up by this bill.

This bill would also provide improved protections for whistleblowers; would allow the Secretary to reduce an employee's Federal pension if they are convicted of a felony that influenced their job at VA; would provide the Secretary with the authority to recoup a bonus provided to an employee who engaged in misconduct or poor performance prior to receiving the bonus; and would allow the Secretary to recoup any relocation expenses that were authorized for a VA employee only through the employee's ill-gotten means, such as waste, fraud, and malfeasance.

Lastly, it would also provide the Secretary with the direct hiring authority that he desperately needs and has been asking for so that we can hire medical center directors and VISN directors in a more expedited manner and fill leadership vacancies across VA.

Mr. Chair, as I have said, I agree with all of my colleagues that the vast majority of VA employees are hard-working public servants who are dedicated to providing quality health care and benefits for veterans. But it is beyond comprehension that, with as much outright malfeasance that Congress, the American public, the media, and our courageous whistleblowers have uncovered at the VA, which has led to the increased scrutiny of the De-

partment over the past few years, that we still see far too many instances of VA employees not living up to the standards America expects and not living up to the standards that our men and women who have served this country deserve.

Knowing many of the instances that have happened at the VA are a slap in the face to our veterans, it is unbelievable to me that anyone would oppose the bill before us here today.

The committee has discovered an instance of an employee showing up drunk to work to scrub in for a surgery on a veteran; a VA employee taking a recovering addict to a crack house and buying him drugs and a prostitute; a VA employee participating in an armed robbery; and senior managers retaliating against whistleblowers, at which point VA then has to pay hundreds of thousands of dollars to the whistleblower in restitution.

Not only are all of these acts egregious and not only are all of these instances factual, they are just the tip of the iceberg; but what causes me to stand before you today is that, in none of these instances, did the VA hold these employees accountable in any reasonable timeframe, if at all.

I blame many factors for this, but mainly I blame an antiquated civil service system and a grievance process set up by the union-negotiated collective bargaining agreements that have left VA unwilling to jump through the many hoops to do what is right.

Mr. Chair, it is well past time that we not allow the current system to continue, and it is certainly our duty to finally take action and enact meaningful changes at VA that put veterans and their families first and foremost. Everything else should come second. That includes the power of the public sector unions.

Everyone in government knows that the civil service laws that were once meant to promote the efficiency of government are now obsolete and make it almost impossible to remove a poor-performing employee. Last year, VA's then-Deputy Secretary Sloan Gibson, under President Obama, sat before the Veterans Affairs' Committee and admitted it was too difficult to fire a substandard VA employee.

The Government Accountability Office studies the government's ability to hold low-performing employees accountable and found that it took 6 months to a year, on average, and sometimes significantly longer, to fire poor-performing government employees.

I have heard the concerns that this bill will hurt the Department's ability to recruit and retain good employees. I don't buy this argument, as every VA employee I speak to tells me exactly the opposite. Good employees want to work in an environment where they know everyone can be held accountable for their actions.

I believe the current status quo of allowing bad employees to continue at